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2	2018 NOV 13 02:23.PM The Honorable Mary E. Rober KING COUNTY of the Honorable Mary E. Rober KING COUNTY of the Honorable Mary E. Rober KING COUNTY OF THE HONORABLE MARY E. ROBER SUPERIOR COUNTY OF THE HONORABLE MA		
3	E-FILED		
4	CASE #: 15-2-15009-0 SEA		
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	IN THE GUIDEDION COURT		
7	FOR KING COUNTY		
8	SEATTLE TUNNEL PARTNERS, a	No. 15-2-15009-0 SEA	
9	Washington joint venture, WASHINGTON STATE DEPARTMENT OF	WSDOT'S REPLY TO HITACHI	
10	TRANSPORTATION,	ZOSEN'S RESPONSE TO WSDOT'S MOTION FOR SPOLIATION	
11	Plaintiffs,	SANCTIONS	
12	HITACHI ZOSEN U.S.A. Ltd.		
13	Intervenor-Plaintiff,		
14	v.		
15	GREAT LAKES REINSURANCE (UK) PLC, a foreign insurance company; et al.,		
16	Defendants.		
17			
18	WSDOT briefly responds to Hitachi's response to WSDOT's motion for spoliation		
19	sanctions.		
20	1. WSDOT is in no way required to go along with STP's spoliation of evidence.		
21	STP not only lost or destroyed critical evidence, but also concealed that it had lost or destroyed		
22	this evidence from WSDOT for more than a year. STP has no explanation for the loss or		
23	destruction of the boulders and the Hauser Journal. STP's explanation for Pieces #1, #2, #3, 4,		
24	#7, #8, and #9 is contradictory and incomplete, at best.		
25	2. Hitachi's assertion that WSDO	T has some obligation to go along with STP's	
26	misconduct merely because it is a co-insured is difficult to understand. WSDOT has no such		

WSDOT'S REPLY TO HITACHI ZOSEN'S RESPONSE TO WSDOT'S MOTION FOR SPOLIATION SANCTIONS - 1

obligation, particularly where, as here, WSDOT disputes that TW-2 caused damage to the TBM. 1 3. STP served its Differing Site Condition claim on WSDOT on December 12, 2013, 2 3 before STP had any evidence that TW-2 damaged the TBM. Goodnight Decl., Ex. Y. Internal STP emails show that STP was looking for evidence that pieces of the now lost or destroyed 4 portions of TW-2 got into the seal system, in which case such evidence would be worth 5 6 "millions." Supplemental Declaration of David R. Goodnight, Ex. WW ("The million-dollar 7 question (millions, really) is if at some point, a shard of the pipe could have entered the seal structure, breaking the seals."). STP never found such evidence. Instead, STP lost or destroyed 8 9 the various pieces of metal that it wanted to test, and that it promised WSDOT it would test. WSDOT is the innocent party and should not be prejudiced by STP's misconduct. 10 11 If the Court finds that STP committed spoliation, the Court has broad discretion in determining an appropriate remedial sanction. *Homeworks Constr.*, *Inc. v. Wells*, 133 Wn. App. 12 892, 899, 138 P.3d 654 (2006). WSDOT does not oppose a separate hearing on the appropriate 13 14 sanction to be imposed if it would be helpful to the Court. DATED this 13th day of November, 2018. 15 I certify that this reply contains 332 words, in compliance with the Local Civil Rules. 16 17 Robert W. Ferguson STOEL RIVES LLP ATTORNEY GENERAL 18 STATE OF WASHINGTON 19 s/Guy W. Bowman s/David R. Goodnight Guy W. Bowman, WSBA No. 29214 Karl Oles, WSBA No. 16401 20 Assistant Attorney General karl.oles@stoel.com Transportation and Public David R. Goodnight, WSBA No. 20286 21 Construction Division david.goodnight@stoel.com 7141 Cleanwater Drive SW Bart W. Reed, WSBA No. 45005 22 PO Box 40113 bart.reed@stoel.com Olympia, WA 98504-0113 Rachel D. Groshong, WSBA No. 47021 23 Phone: (360) 753-1626 rachel.groshong@stoel.com 600 University Street, Suite 3600 24 **Attorneys for Plaintiff Washington State** Seattle, WA 98101 **Department of Transportation** Phone: (206) 624-0900 25

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1 **DECLARATION OF SERVICE** 2 Cindy Castro, hereby declares as follows: 3 I am a legal practice assistant employed by the law firm of Stoel Rives LLP, a citizen of the United States, over the age of 18 years, not a party to this matter, and competent to 4 testify herein. 5 2. On the date indicated below, I caused to be delivered one true and correct copy of the foregoing document on counsel of record as follows: 6 **Attorneys for Plaintiff Seattle Tunnel Partners** Dale L. Kingman, WSBA #07060 ☐ hand delivery via legal messenger 8 Matthew F. Pierce, WSBA #34019 □ overnight delivery Greg D. Pendleton, WSBA #38361 ☐ mailing with postage prepaid John D. Cadagan, WSBA #47996 □ e-service from King County ECF system Guin B. Bogusz, WSBA #52937 ☑ e-mail service per agreement of the parties: 10 Miles C. Bludorn, WSBA54238 dkingman@gordontilden.com GORDON TILDEN THOMAS & CORDELL LLP mpierce@gordontilden.com 11 600 University Street, Suite 2915 gpendleton@gordontilden.com Seattle, WA 98101 jcadagan@gordontilden.com 12 Phone (206) 467-6477 gbogusz@gordontilden.com mbludorn@gordontilden.com 13 Joseph L. Luciana, III, PA Bar #50286* Samantha L. Brutout, PA Bar #203553* □ overnight delivery 14 James S. Malloy, PA Bar #89354* ☐ mailing with postage prepaid David G. Meredith, PA Bar #307466* □ e-service from King County ECF system 15 John P. Miller, PA Bar #91304* ☑ e-mail service per agreement of the parties: Victor A. Delnore, PA Bar #309852* jluciana@dfllegal.com 16 Brian R. Davidson, PA Bar #74684* sbrutout@dfllegal.com DINGESS, FOSTER, LUCIANA, DAVIDSON imalloy@dfllegal.com 17 & CHLEBOSKI, LLP dmeridith@dfllegal.com 20 Stanwix Street, 3rd Floor imiller@dfllegal.com 18 Pittsburgh, PA 15222 adelnore@dfllegal.com *Admitted pro hac vice bdavidson@dfllegal.com 19 Haley K. Krug, WSBA #39315 20 ANDERSEN SCHWARTZMAN □ overnight delivery WOODARD BRAILSFORD ☐ mailing with postage prepaid 21 101 So. Capitol Blvd, Suite 1600 ☐ e-service from King County ECF system Boise, ID 83702 ✓ e-mail service per agreement of the parties: 22 Phone: (208) 342-4411 hkk@aswblaw.com 23 24 25

WSDOT'S REPLY TO HITACHI ZOSEN'S RESPONSE TO WSDOT'S MOTION FOR SPOLIATION SANCTIONS - 3

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WSDOT'S REPLY TO HITACHI ZOSEN'S RESPONSE TO WSDOT'S MOTION FOR SPOLIATION SANCTIONS - 4

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13	I declare under penalty of perjury under the laws of the State of Washington that the			
14	foregoing statements are true and correct.			
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